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In re Application of	:	DECISION
EBERL et al.	:	
Application No.: 10/551,179	:	
PCT No.: PCT/EP02/04030	:	
Int. Filing Date: 10 April 2002	:	
Priority Date: 22 May 2001	:	
Attorney Docket No.: 101795.56308US	:	
For: METHOD AND SYSTEM FOR	:	
PROVIDING INFORMATION ON THE EYE	:	

This decision is in response to applicants' submission filed in the United States Patent and Trademark Office (USPTO) on 29 September 2005.

### **BACKGROUND**

On 10 April 2002, applicants filed international application PCTEP02/04030 which designated the U.S. and claimed a priority date of 22 May 2001. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 28 November 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 24 November 2003 (22 November 2003 being a Saturday).

On 29 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a petition under 37 CFR 1.137(b) to revive the application.

### **DISCUSSION**

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted the basic national fee on 29 September 2005.

As to item (2), applicants submitted the petition fee on 29 September 2005.

As to item (3), a statement from the party or parties whose delay is at issue must be provided. Here, it is not clear that the statement is from the relevant party. MPEP § 711.03(c), item II.E. states that “[w]hen an applicant assigns the application to a third party (e.g., the inventor/applicant’s employer), and the third party decides not to file a reply to avoid abandonment, the applicant’s actions, inactions or intentions are irrelevant under 37 CFR 1.137, unless the third party has reassigned the application to the applicant prior to the due date for the reply.” This MPEP section further states that “where the applicant permits a third party (whether a partial assignee, licensee, or other party) to control the prosecution of an application, the third party’s decision whether or not to file a reply to avoid abandonment is binding on the applicant.”

It is not clear from the petition who the application was assigned to and who had control of the prosecution of the application at the time of abandonment. The petition states that by “virtue of German employee inventor’s law, Physoptics took over their right to this application world wide.” However, the extent of Physoptics right is not clear. The petition then states that “Physoptics later went into bankruptcy and their trustee refused to release their right to this application and refused to initiate the US national phase.” However, it is not clear when Physoptics went into bankruptcy, when the trustee was appointed, and what rights the trustee had. The petition further goes on to state that applicant filed a lawsuit in November of 2003 against the trustee and that an agreement was reached releasing all rights to this and numerous other applications. Again, however, it is not clear when this agreement was reached and when the trustee released all rights. Further complicating the issue, the petition goes on to state that “all rights to this application were not held by Physoptics”. It is unclear who the other rights belonged to, when these rights were acquired, and when these rights were in effect. Also, the type and extent of these rights are unclear. For instance, did any of these parties have any say in controlling the prosecution of the application? Did any of these parties have any reversionary rights in the application? See MPEP § 711.03(c), item II.E. Clarification is required.

### **CONCLUSION**

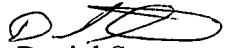
The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice, for the reasons set forth above.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper response.

**Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.**

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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